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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/431,566	10/29/1999	LAURENCE WAYNE CLARKSON	7000-044	8874

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EXAMINER
PHAM, HUNG Q

ART UNIT	PAPER NUMBER
2172	

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/431,566	CLARKSON ET AL.	
	Examiner	Art Unit	
	HUNG Q PHAM	2172	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-11,13-17,22-30 and 32-46*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Applicants states that:

Claims 22-24 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses. On face, claims 22-24 are directed to a machine (a concrete thing, consisting of parts) - namely a computer readable medium. Computer readable media are recognized as apparatus claims covering floppy disks, CDs, and the like. This is sufficient to satisfy the requirements of 35 U.S.C. § 101. "If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware ox hardware and software combination, it defines a statutory product." *Burr v. Duryee, 68 U.S. 5':31, 570* (1863). MPEP § 2106(IV)(B)(2)(a) (citation omitted, see p. *2100-14 of August 2001 i1PEP). See also in re Beauregard,* 53 F.3d 1583, (Fed. Cir. 1995). The Patent Office's refusal to acknowledge that the preamble's apparatus language is sufficient to shift the claim into the realm of statutory subject matter is contrary to the recent decisions of the Federal Circuit. Applicant requests withdrawal of the § 101 rejection at this time.

Examiner respectfully traverses because:

Claims 22-24, especially claim 22 is a data structure, and instead of a physical or logical relationship description among the structure, the claimed data structure has two section for storing data, and these features are directed to nonfunctional descriptive material: ***a first section for storing an audio segment*** and ***a second section for storing information indicating the number of audio segments in the first section***. Therefore, claims 22-24 are rejected because the limitation of the claim is just a mere arrangement of data without creating any functional interrelationship within the data structure.

Applicants states that:

The Patent Office focuses on common words that are used in the claim and in the references without analyzing what those words mean in the reference- For example, the Patent Office state that "Gustman [831] further discloses an audio database for storing ***audio segments*** (Gustman [831], Long Term Storage 260, Col. 8, lines 25-34)." (Office Action of 03 October 2002, page 7, lines 2-4, emphasis in original). This may be correct as far as the reference is concerned, but this is not the same as "an audio database for storing audio segments containing *announcements to be played to an end user in a network"* which is what is recited in claim 1. The Patent Office admits that the audio segments of the reference do not contain announcements to be played to an end user in a network. (Office Action of 03 October 2002, page 8, lines 9-11). The Patent Office attempts to cure this deficiency by stating that Gustman `831 teaches general multimedia content and that multimedia content includes sound. The Patent Office then opines that "an announcement could be an instance of a phrase 206 as ***an audio segment."*** (Office Action of 03 October 2002, page 8, lines 14-15, bold italics in original, underline added). Merely because something could be possible does not mean that there is a requisite

teaching or suggestion to support a rejection. The Patent Office is obligated to show where the motivation to use the reference in this manner is located. Absent such a showing, the claim element has not been shown by the combination, and the Patent Office has failed to make a *prima facie* case of obviousness.

Examiner respectfully traverses because:

Regarding to claims 1, 9, 30, and 41, as discloses by Gustman [831], multimedia data is in the form of text, graphics, video, animation, and sound (Gustman [831], Col. 1, lines 12-14). An announcement, in general, is multimedia data in the form of sound. For example, an announcement such as "You've got mail" as played by AOL is just an audio file in a user computer. There is no difference in the Gustman [831] audio database with applicants audio database because both of them is for storing. In addition, if Gustman [831] audio database could store audio segment, there is no reason that Gustman [831] audio database could not stored audio segment containing announcements to be played to an end user in a network. Therefore, in this case, there is no need a suggestion from Gustman [831] for an ordinary skill in the art, the Gustman [831] audio database could be modified to store audio segment containing announcements to be played to an end user in a network.

Applicants states that:

The second recited element of claim 1 is an audio package builder export tool. This tool accesses the audio database to build an audio package including an audio segments file and an index file. The audio segments file contains an audio segment to be played by a gateway in the network. The Patent Office indicates that Gustman' 527 "teaches a catalogue as an audio package that [sic] disclosed in figure 18A of Gustman [527]." (Office Action of 03 October 2002, page 7, lines 5-6). Figure 18A does mot disclose an audio package, but rather discloses Catalogues A, B, and C, which relate to multimedia data 1802A, 1802B, and 1802C. The Patent Office's flawed interpretation of the reference and its teachings taints the remainder of the patent Office's discussion of the claim element The Patent Office states that a "catalogue could be built by using a catalogue element that is referred to as a phrase." (Office Action of 03 October 2002, page 7, lines 6-7). Again, the fact that the Patent Office relies on a conditional term reflects the Patent Office's misapplication of the appropriate standard. Just because something could be modified does not mean that there is any suggestion or motivation to modify the reference to do so. Further, whether the catalog can be built with phrases is irrelevant to the determination of whether the reference teaches or suggests an audio package builder/export tool.

Examiner respectfully traverses because:

As recited in the claim, the second limitation is ***an audio package builder/export tool for accessing the audio database to build an audio package including an audio segments file for storing an audio segment to be played by a***

gateway in the network and an index file containing information usable by the gateway for locating the audio segment in the audio segments file. Thus, an audio package is built by a tool (so called an audio package builder/export tool) to include an audio segments file and an index file. The function of an audio package is for containing, and the function of audio package builder/export tool is for accessing the database. Gustman [527] teaches a catalogue (considered as ***an audio package***) that disclosed in figure 18A of Gustman [527]. A catalogue could be built by using a catalogue element that is referred to as a phrase. A phrase is associated with a portion of multimedia data. A phrase has a plurality of attributes some of which are attribute elements. An index is built on the attributes and attribute elements. The index can be used to navigate through the catalogue. Segment 204 is a container element. It can contain other elements. For example, segment 204 can contain one or more instances of phrase 206 (Gustman [527], Col. 7, line 63-Col. 8, line 29). Thus, the phrase 206, the segment 204 and the index are respectively considered as ***the audio segment, audio segment file*** and ***index file.***

Applicants states that:

> Applicant claims a tool that assembles a package that contains an audio segments file and an index file and exports this package to the gateways. The index of the reference is never sent anywhere and is only used at the central facility. The fact that a user may receive multimedia content at a remote location is not the same as exporting the audio package that has the index file. The Patent Office has failed to show where the audio package builder/export tool may be found in the reference, much less where it is shown that the index is sent to a remote location.

Examiner respectfully traverses because there is no limitation in the claim that indicates the process of exporting the package to the gateways.

Regarding to claims 25, 37, and 45, Gustman [831] further discloses a centralized distribution architecture as in FIG. 3, a main site 302 and a plurality of remote sites 306A-306D (Gustman [831], FIG. 3, Col. 13-14), a distribution facility can be used to transmit the data thus giving a user access to all of the data contained in the digital library system despite the user's location. Multimedia data is permanently stored at a centralized location. Multimedia data that is requested by a user is cached from the centralized location to the user site. A wide area network can be used to interconnect user sites with the main site. The WAN can be used to transmit data that resides at the main site or another user site to a requesting user site. In addition, data can be transferred between sites via the Internet (Gustman [831], Col. 5, lines 48-57). This indicates a catalogue (considered as ***an audio package***) could be transmitted, and obviously, to a gateway.

Because of the reasons as discussed above, claims 1-11, 13-17, 22-30, and 32-46 maintain the rejection as discussed in the final office action.

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